THE HONOURABLE SRI JUSTICE K.C.BHANU

WRIT PETITION No.16204 of 2003

DATED: 08-08-2005

Between:

B. Vishnu Kumar Reddy, S/o. B. Narayana,

TourismGuide, A.P. Tourism Development

Corporation Limited, Tirupathi,

Chittoor District. …Petitioner

AND

1. The Chairman & Managing Director,

A.P. Tourism Development Corporation Limited,

Himayathnagar, Hyderabad and two others.

…Respondents

THE HONOURABLE SRI JUSTICE K.C.BHANU

WRIT PETITION No.16204 of 2003

ORDER:

This writ petition has been filed seeking a writ of Mandamus declaring the impugned proceedings No.TDC/Admn/2002, dated 3-9-2002 issued by the Chairman & Managing Director, A.P. Tourism Development Corporation Limited, Hyderabad as illegal, arbitrary and violative of Articles 14 and 16 of the Constitution and to consequently hold that the petitioner is entitled for regular absorption as Tourist Guide in the scale of pay attached on par with other counter parts discharging the same type of duties like Sri D. Jayaprakash and M.V. Subrahmanyam with all consequential benefits.

2. The case of the petitioner is that he has been working as a Tourist Guide in the A.P. Tourism Development Corporation since 29.10.1992 on daily wage basis and even after completion of 10 years of service, his case not considered for regular absorption as laid down in G.O.Ms.No.212, dated 22-04-1994. When the services of some similarly placed persons for regular absorption were rejected by the 1st respondent, they preferred W.P.No.27397 of 1995 and the Hon'ble High Court allowed the same directing the respondents to regularize the services of those petitioners in their respective posts. Basing on that order, one D. Jayaprakash and some others preferred W.P.No.24590 of 1995 for regularization of their services, and the same was also allowed on 24-01-1997. Thereafter, the petitioner filed W.P.No.12891 of 2002 for a declaration that he is also entitled for regular absorption as Tourist Guide and the same was disposed of on 18-07-2002 directing the 1st respondent to consider the petitioner's representation dated

6-9-2001, if not already disposed of. Thereafter, the 1st respondent issued the impugned proceedings, rejecting the petitioner's representation for regularization of his service. Hence, the present writ petition.

3. The respondents 1 and 2 filed counter affidavit denying all the allegations made in the writ petition and submitted that the petitioner was not engaged as tourist guide but his services were utilized as and when necessary by the Corporation from 29.10.1992. Further it was stated that the service certificate dated 6-7-2002 issued by the 2nd respondent does not mention that the petitioner is an employee of the Corporation being engaged on daily wages or on NMR basis and that the name of the petitioner is not in the muster rolls. The 1st respondent has considered the case of the petitioner objectively on the basis of the material and rejected the petitioner's case for regularization, as he was never an employee of the respondent-Corporation. Consequently, it was prayed that the writ petition be dismissed.

4. The learned Counsel for the petitioner contended that the petitioner's name along with the names of two other persons was shown under the caption of Tourist Guides, and there is no differentiation between their natures of employment and when the services of those two persons have been regularized, the petitioner is also liable for regularization of his service. It is further contended that the second respondent-Divisional Manager, who signed the affidavit and additional affidavit made a false statement that the name of the petitioner was not in the muster rolls, and therefore, the respondent is liable for perjury. He further contended that the contentions, which were raised in the counter-affidavit does not supplement, when the reasons were not given in the impugned proceedings and hence, he prays to allow the writ petition.

5. On the other hand, the learned Counsel for the respondents contended that the case of the petitioner stands on a different footing since the petitioner was appointed on oral basis and for a limited number of hours, whenever there is work and there was no continuity of engagement. The cases of the other two persons comes within the purview of G.O.Ms.No.212 dated 22nd April, 1994, as they were engaged on daily wage basis, and, hence, their services have been regularized.

6. The specific case of the petitioner is that he was appointed as a guide by the A.P. Tourism Development Corporation on daily wage of Rs.40/- per day with effect from

29-10-1992. But the respondents contended that the petitioner was not paid any amount as wages on N.M.R or daily wage basis, and therefore, the question of absorption of his services does not arise. When the petitioner's services have been terminated, the petitioner filed W.P.No.12891 of 2002, where under this Court *vide* order dated 18th July, 2002 directed the first respondent to consider and dispose of the petitioner's representation dated 6-9-2001, if not already disposed of within a period of three weeks. Thereafter, the impugned proceedings dated 3-9-2002 were issued stating that the Corporation has not engaged the petitioner in any capacity to work in the Corporation, and the petitioner himself offered his services as a Tourist Guide. Whenever the Corporation conducted tours, the services of the Tourist Guides were engaged for a limited number of hours to show to the tourists places of tourist interest and as soon as the tour was completed, guide charges for the services rendered by these particular tourist guides were arranged and there was no continuity of such engagement. The petitioner was not paid any amount as wages on N.M.R or daily wage basis. The relationship of tourist guide with APTDC was never that of employee and employer. The petitioner also made available the copy of the Pupils Attendance Register June/July, 1996, July/August, 1996 and August/September, 1996. They have not been denied by the respondents'-Corporation specifically.

A perusal of these Pupils Attendance Registers would go to show that under the caption "guides" the names of M.V. Subrahmanyam, D. Jaya Prakash and B. Vishnu Kumar Reddy (petitioner herein) were shown.

7. A specific plea has been taken by the petitioner in his affidavit that the first respondent has not objectively considered his case for regular absorption in regular rules of pay as was done in other similar cases like D. Jaya Prakash and M.V.Subrahmanyam. The services of Mr. M.V. Subrahmanyam and D. Jaya Prakash, were regularized as per the directions of this Court in Writ Petition No.24590 of 1995 dated 24-01-1997, and the same has become final. Whether the case of the petitioner stands on the same footing with that of D. Subrahmanyam and M.V.Subrahmanyam is required to be decided and gone into by the first respondent-Corporation in accordance with the Rules and Regulations of the Corporation. The contention of the learned Counsel for the first respondent is that the services of D.Jaya Prakash and M.V.Subrahmanyam have been regularized as certain conditions laid down under G.O.Ms.No.212 dated 22/04/1994 have been fulfilled.

But such reason was not assigned in the impugned proceedings. Therefore proper action has to be taken by the first respondent-Corporation in accordance with the rules and regulations and also the material available. Hence, the impugned proceedings are liable to be set aside.

8. The Writ Petition is allowed and the matter is remitted to the first respondent to consider the aspect as to whether the case of the petitioner stands on the same footing with that of D.Jaya Prakash and M.V.Subrahmanyam and to pass appropriate orders in accordance with the rules and regulations

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K.C. BHANU, J.

DATED: 8th August, 2005

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